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Library News

New Library Staff

Kelly Battese is our newest library aide. She was born and raised in Phoenix and is currently planning to attend ASU in the fall to complete her BA in Political Science. Prior to joining the Law Library, Kelly worked in the reference department at the Phoenix Public Library for 3 years.

Ryan Case joined us in early January and works in the Reference and Information Services Department on the second floor. Ryan recently moved back to Arizona after earning his master's degree in Library and Information Science from Kent State University. Ryan was born and raised in Oregon where he earned his undergraduate degree in Political Science. Ryan loves Arizona and plans to make it his home. In his spare time, Ryan enjoys exercising, training in the martial arts, spending time with family and friends as well as being involved with his church.

Microfiche

The Law Library, as many of you may be aware, has many items on microfiche – bar journals, federal legislative information, native American codes, even treatises. But have you ever tried to use our microfiche reader/printers? For those of you that have, they are not very good machines – they definitely don't print well and they are just plain outdated, aren't they? The library staff would agree with you. As a result, the Library has purchased a new microfiche reader that really does a nice job. Actually, it's not a reader, it's really a scanner. Not only will you be able to print (very nice images, by the way), the new machine will allow you to send the image electronically. You can choose to send the image as a PDF (Adobe Acrobat) or as a TIF or JPEG file - for those of us who are not completely computer savvy, let's just leave it at "you can send the file by e-mail."

Library staff members are working on instructions to be posted by the machines, but if you need help with something on microfiche in the meantime, please be sure and ask. The new machine is located on the southwest side of the 2nd floor – just around the corner from the microfiche cabinets. The cost for printing from the new scanner will be the same as printing from any of our computers - \$0.05 per page. Come by and see the new equipment; ask a staff member and try it out. For a microfiche scanner – it's really fun!

Wireless

Now the Law Library has free wireless high-speed internet access too. The Library's second floor in the East Court Building provides a quiet location for patrons to connect wireless devices to the Internet. Hot spots with filtered Internet

access are available for devices such as notebooks, laptops and PDAs equipped with wireless capability. Information on how to configure your wireless laptop, notebook, or PDA can be found at the Reference Desk.

Horizon Information Portal

The Law Library catalog, Horizon Information Portal, is now offering more information about books and other items in our collection. For many of our records, there are more searchable fields and more information is displayed, including tables of contents, summaries, author information, excerpts, and cover images. To see some of the new features, try our favorite quick search: select a general keyword search, type "dog" and click Go.

The summary screen will list ten hits with the word "dog" in the title, table of contents, subject, or other notes, and most of them will show pictures of the book jackets. Click on the first title, *101 Law Forms For Personal Use* by Ralph Warner and Robin Leonard. The picture of the cover is there on the record and can be enlarged. In the "Item Information" box on the left side, there are some new links. The links for this book include Author Notes and Sketches, Table of Contents, and Summary. To see if the book is available for checkout, select "View Holdings." Click the "Back to Results" link in the upper right-hand corner and look at *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris* by Richard Kluger, another book with the word "dog" in the table of contents note. The links for this book include reviews from two different sources, as well as a table of contents. For a more familiar example (if you're reading), look up *The Supreme Court's Greatest Hits*, which includes a very useful summary, or *The American Jury System* by Ralph N. Jonakait, which has an excerpt of the first chapter.

This added information, provided by Syndetics Solutions and Blackwell's Book Services, is intended to help users locate information and evaluate its usefulness. Watch for more changes in our catalog, including skins, RSS, and ways to set up personal user preferences.

Recent Court Decisions

United States v. Antelope

9th Circuit Court of Appeals, No. 03-30334
(January 27, 2005)

Reversing a Montana district court, the 9th Circuit Court of Appeals has ruled that a convicted sex offender had been unjustly denied his Fifth Amendment right against self-incrimination.

The Defendant's troubles began when he joined an Internet website that advertised nude pre-teen sex videos. Unbeknownst to the Defendant, he began corresponding with an undercover law enforcement official and was arrested when he ordered a child pornography video. Antelope plead guilty to possessing child pornography and was placed on five years probation. One term of his probation required him to participate in SABER – a Sexual Abuse Behavior Evaluation and Recovery program that subjects a participant to "mandatory periodic and random polygraph examinations."

The Defendant challenged the term of his probation on the basis that it would force him to incriminate himself despite the assurances from the district court judge that he would be protected by an "absolute privilege under Montana law between a counselor, psychologist and the patient." He asserted that his Fifth Amendment right "restrains the government from forcing him to admit prior wrongdoings unless his statements are protected by us and derivative use immunity."

The 9th Circuit court wrote that "the Fifth Amendment guarantees that no person shall be compelled in any criminal case to be a witness against himself" and that this right "remains available to Antelope despite his conviction." Writing for the court, Judge McKeown said while the disclosures made in a polygraph test "may serve as a valid rehabilitative purpose, they may also be starkly incriminating, and there is no disputing that the government may seek to use such disclosures for prosecutorial purposes." She went on to say that the "adoption of the governments position would all but eviscerate the protections the self-incrimination clause was designed to provide."

United States v. Goiry, No. 02-1010
United States v. Munoz, No. 03-1061
 2nd Circuit Court of Appeals
 (January 24, 2005)

Luz Marina Munoz pleaded guilty to conspiracy to distribute 500 or more grams of cocaine and was subsequently sentenced to 46 months in prison followed by 4 years of supervised release. Carlos Goiry pleaded guilty to conspiracy to distribute and possess with the intent to distribute 5 or more kilograms of cocaine and was sentenced to approximately 11 years in prison.

The 2nd Circuit Court of Appeals overturned the guilty plea and the sentences because the district court judge accepted the pleas and handed down the sentences in the judge's robing room. The appellate court consolidated these two cases because they shared a common issue and ruled that the robing room sessions violated the public's "qualified First Amendment right of access to plea and sentencing proceedings." While Goiry did not object to the fact that he was sentenced in the robing room and Munoz did not object to her proceedings being held there, the 2nd Circuit exercised its "supervisory powers" and remanded both cases to the District Court for "further proceedings to be held in the public courtroom."

The appellate court, citing *U.S. v. Haller*, 837 F.2d 84 (2nd Cir. 1998), ruled that "the public and press have a qualified First Amendment right of access to plea and sentencing proceedings." The district court should have made findings "on the record demonstrating the need for the exclusion." Procedures for excluding the public from court proceedings have been in place for twenty years and include the public's right to challenge any closure or exclusion motion. Motions for closure or exclusion must be "docketed in the public docket files maintained in the court clerk's office." Additionally, closure/exclusion motions must be "docketed sufficiently in advance of a hearing on such motion to permit intervention by interested members of the public."

Writing for the court, Judge Straub said, open trials play "as important a role in the administration of justice today as it did for centuries before our separation from England. The value of openness lies in the fact that

people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system."

Public Employee Drug Testing

The law surrounding drug testing and drug usage by individuals has been scrutinized by a variety of courts and political pundits. The furor surrounding the admission of steroid use by Jose Canseco¹ has been splashed across the headlines for several weeks and Senator John McCain has advocated stronger monitoring and prevention. Drug testing of high school athletes and other after-school participants has garnered attention as well, and previous attention by the U.S. Supreme Court. In light of inevitable drug testing, you may wonder, what indeed are your rights and when can you legally be tested?

The Fourth Amendment to the Constitution prohibits the government from conducting unreasonable searches and seizures. It is clear that urine, blood or other testing of a public employee pursuant to a drug and alcohol testing policy "intrudes upon expectations of privacy that society has long recognized as reasonable,"² and thus constitutes a search and seizure under the Fourth Amendment. The ultimate determination of a search's reasonableness requires judicial balancing of the intrusiveness of the search against its promotion of a legitimate government interest separate from the government's general interest in law enforcement.³

What does this mean for those of us employed by the county? Public employers may, in certain circumstances, test employees for drug use. Interpretations have varied, but the recent

¹ *Juiced: Wild Time, Rampant Roids, Smash Hits, and How Baseball Got Big*. Regan Books, 2005. [No, we don't have it].

² *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989).

³ *Vernonia School District 47J v. Acton*, 515 U.S. 646, 660 (1995).

Arizona Supreme Court decision involving a firefighter in Mesa⁴ has clarified Arizona law. You may be subjected to random, suspicionless testing if in a safety-sensitive position (such as an armed peace officer or bus driver in control of passenger safety) where you may reasonably expect that the conditions of your employment would subject you to closer scrutiny than would be required of the general government workforce. And, the government must demonstrate a compelling interest – a real and substantial risk that a drug testing policy is tailored to remedy, rather than a general interest in deterring drug use among employees.

Although you may be tested upon receipt of a job offer or promotion, drug testing generally would be limited in situations not fitting these criteria, requiring some form of suspicion or cause and advance notice. So, comparatively few of us may be tested after employment begins unless aberrant behavior is observed and reported. The Fourth Amendment, though developed in a time prior to regular illegal drug abuse, protects Americans from overly zealous and intrusive policies and practices.

Reviews

The Supreme Court's Greatest Hits 2.0

The Law Library has acquired a program on CD (2 disc set) called *The Supreme Court's Greatest Hits, ver. 2.0*. The program is a digital audio collection of U.S. Supreme Court oral arguments published by Northwestern University Press. It includes a synopsis of each case, biographies of the justices involved in the case, and the final disposition of the case. There are over one hundred hours of oral arguments from 64 cases decided between 1955 and 2001. Some of the cases include:

- *Miranda v. Arizona*
- *New York Times v. Sullivan*
- *Roe v. Wade*
- *Bush v. Gore*
- *U.S. v. Nixon*

The program has been installed on the library's computers and headphones are available for

patron use. Patrons may check out the CDs and headphones from the Circulation Desk.

Additionally, because most of the arguments are over an hour long, the program is available for check out for use at home or at your office.

Judicial Business of the U.S. Courts

The U.S. Administrative Office of the Courts, in a March 15, 2005 news release, announced its report on case filings in the federal appellate and trial courts in fiscal year 2004. A tenth year of growth since 1995 added up to "double digits percentage increase workload for the Judiciary."

Statistics show that the number of appeals increased to an all-time high of 62,762 or a 3%. Of the 62,762 appeals, 28% were administrative appeals with the biggest increase in immigration appeals. Criminal appeals accounted for 20% of all appeals filed. The Administrative Office of the Courts broke down criminal appeals as follows:

- Drug appeals up 2% to 4,660 cases;
- Firearm appeals up 20% to 2,021 cases;
- Fraud appeals up 4% to 1,407 cases;
- Sex crime appeals up 30% to 265 cases.

There was also a 23% increase in "second or successive motions for habeas corpus relief," which was directly related to the Supreme Court's decision in *Blakely v. Washington*.

In the district courts, there were 352,360 civil and criminal cases filed and were broken down as follows:

- Personal injury/product liability cases doubled to 2,221 cases;
- Labor related cases increased by 6%;
- Intellectual property cases rose by 7%.
- Social security cases fell by 7%;
- Bankruptcy Courts saw a decrease in filing for the first time since 2000.

Defendants in pretrial services and post-conviction supervision increased to an all-time high of 100,005. "Immigration was the major offense charged in 23,478 pretrial cases opened and an increase of 18 percent." In addition, pre-trial services prepared 94,216 reports, an increase of 2%.

⁴ *Petersen v. City of Mesa*, 207 Ariz. 35 (2004).

A complete copy of the report, *Judicial Business of the U.S. Courts*, can be found at <http://www.uscourts.gov/judbus2004/contents.html>.

Family Violence

Littel, Kristin. *Family Violence: An Intervention Model for Dental Professionals*. United States Department of Justice, Office of Justice Programs, Office of Victims of Crimes, 2004. <http://www.ojp.usdoj.gov/ovc/publications/bulletins/dentalproviders/ncj204004.pdf>.

In an effort to improve responses to family violence by health care providers, the University of Minnesota's School of Dentistry and the Program Against Sexual Violence joined together to implement a training program for dental students, as well as practicing dentists, to cover the following issues as they relate to family violence:

- Ethical and legal consideration;
- Definitions and dynamics of family violence;
- The impact of violence on victims;
- Intervention skills and techniques;
- Ways to create a "safe office environment"

Dental professionals, for various reasons (see chart) are the least likely of all health care providers to intervene in family violence cases. Although 50 states require that dentists report cases of suspected child abuse, only 1 percent of all child abuse reports are made by dental professionals. That is an alarming statistic when you consider the fact that 60% of all abuse cases have injuries to the head and neck and more than one-half of all child abuse victims had injuries to their head, face and neck.

Barriers to Intervention Reported by Dental Professionals

- | | |
|---|--|
| ▪ Limited knowledge of family violence issues. | ▪ Lack of local referral information. |
| ▪ Lack of practical experience on how to intervene. | ▪ The presence of a partner or children. |
| ▪ Misconceptions about the nature of intervention. | ▪ Concern about offending patients. |
| ▪ Fear of litigation. | ▪ Embarrassment about bringing up the topic. |

A survey included in the training showed that "close to one-half of the dental professionals did not view themselves as responsible for dealing with these problems." Twenty-eight percent admitted they did not feel comfortable talking about domestic violence while others indicated they feared the "legal ramifications" of reporting abuse.

After the training, 85% of the participants felt they should report suspected abuse; 74% thought family violence questions should be asked on the intake form; and all felt more comfortable discussing abuse issues with patients.

Civil Litigation: New Publications

A number of civil litigation papers and studies have recently been published, covering jury trials and verdicts, medical malpractice, securities, class actions, and punitive damages awards. Here are some that we've come across, along with one of our newest titles – and speaking of new titles, don't forget to check our [new books list](#) on our Web site, at <http://www.superiorcourt.maricopa.gov/lawlibrary/>.

American College of Trial Lawyers, Ad-Hoc Committee on the Future of Civil Trial. *The "Vanishing Trial:" The College, the Profession, the Civil Justice System*. Irvine, CA: American College of Trial Lawyers, 2004. <http://www.actl.com/PDFs/VanishingTrialReportAppendices.pdf>.

Black, Bernard, Charles Silver, David Hyman and William Sage. *Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988–2002*. Columbia Law School, Law and Economics Working Paper No. 270, University of Illinois, Law and Economics Research Paper No. LE05-002, University of Texas Law School, Law and Economics Research Paper No. 30 (March 2005); forthcoming, 2 *Journal of Empirical Legal Studies* (2005). Available at the Social Science Research Network, <http://ssrn.com/abstract=678601>.

Cohen, Thomas H. *Contract Trials and Verdicts in Large Counties, 2001*. U.S. Department of Justice, Office of Justice Programs, Bureau of

Justice Statistics, 2005. Acrobat file, ASCII file and spreadsheets (zip format) available at <http://www.ojp.usdoj.gov/bjs/abstract/ctvlc01.htm>.

Cohen, Thomas H. *Punitive Damage Awards in Large Counties, 2001*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2005. Acrobat file, ASCII file and spreadsheets (zip format) available at <http://www.ojp.usdoj.gov/bjs/abstract/pdalc01.htm>.

Pace, Nicholas M., Daniela Golinelli and Laura Zakaras. *Capping Non-Economic Awards in Medical Malpractice Trials: California Jury Verdicts Under MICRA*. Santa Monica, CA: RAND Institute for Civil Justice, 2004. <http://www.rand.org/pubs/monographs/2004/RAND-MG234.pdf> [MICRA is California's Medical Injury Compensation Reform Act].

Page, William H. "Class Certification in the Microsoft Indirect Purchaser Litigation." (February 22, 2005). Available at the Social Science Research Network, <http://ssrn.com/abstract=671048>.

Securities Class Action Case Filings 2004: A Year in Review. Menlo Park, CA: Cornerstone Research, 2005. http://securities.stanford.edu/clearinghouse_research/2004_YIR/2004010305.pdf.

Simmons, Laura E. and Ellen M. Ryan. *Post-Reform Act Securities Case Settlements: Updated Through December 2004*. Menlo Park, CA: Cornerstone Research, 2005. http://securities.stanford.edu/Settlements/REVIEW_1_995-2004/Settlements_Through_12_2004.pdf.

Survey of State Class Action Law, 2004: A Report of the State Laws Subcommittee of the Class Actions and Derivative Suits Committee, Section of Litigation, American Bar Association. [St. Paul, Minn.]: Thomson/West, c2004. [KF8896.Z95.S87.2004](http://www.abar.org/publications/KF8896.Z95.S87.2004).

Willging, Thomas E. and Shannon R. Wheatman. *An Empirical Examination of Attorneys' Choice of Forum in Class Action Litigation*. Washington, DC: Federal Judicial Center, 2005. [http://www.fjc.gov/public/pdf.nsf/lookup/CIAct05.pdf/\\$file/CIAct05.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/CIAct05.pdf/$file/CIAct05.pdf).

Contributors

Susan Armstrong, Editor
Lesley Brinker
Liz Fairman
Rebecca Fields-Arden
Valerie Lerma
Barbara Moren
Richard Teenstra

Superior Court Law Library
101 W. Jefferson
Phoenix, AZ 85003
602-506-3461
602-506-3677 (fax)
Services@scll.maricopa.gov